

PAMELA Y. PRICE (SBN 107713)
PRICE AND ASSOCIATES
The Latham Square Building
1611 Telegraph Avenue, Ste 1450
Oakland, CA 94612
Telephone: (510) 452-0292
Facsimile: (510) 452-5625

Attorneys for Plaintiff
JOHN EARL CAMPBELL

KATHLEEN MAYLIN (SBN (SBN 155371)
CARA CHING-SENAHA (SBN 298467)
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, California 94105
Telephone: (415) 394-9400
Facsimile: (415) 394-9401

Atorneys for Defendants
NATIONAL RAILROAD PASSENGER
CORPORATION dba AMTRAK and JOE DEELY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN EARL CAMPBELL,

Case No. C05-05434 MJJ

Plaintiff,

v.

NATIONAL RAILROAD PASSENGER
CORPORATION dba AMTRAK, JOE DEELY,
and DOES 1-15, inclusive.

JOINT SEPARATE STATEMENT OF UNDISPUTED FACTS

Date: May 22, 2007
Time: 9:30 a.m.
Courtroom: 11
Floor: 19
Judge: The Hon. Martin J. Jenkins

Complaint Filed: 12/30/05
FAC Filed: 2/23/06
Trial Date: 7/23/07

**[Fed.R.Civ.Proc. 56; JUDGE JENKINS'
STANDING ORDER]**

Pursuant to The Hon. Martin J. Jenkins' Standing Order, the PARTIES, Plaintiff JOHN EARL CAMPBELL ("Plaintiff") and Defendants NATIONAL RAILROAD PASSENGER CORPORATION (aka AMTRAK) and JOE DEELY (jointly "Defendants"), hereby submit this Joint Statement of Undisputed Material Facts for consideration in connection with Defendants Amtrak and Joe Deely's Motions for Summary Judgment or Partial Summary Judgment, both of which are scheduled for hearing on May 22, 2007, at 9:30 a.m.

UNDISPUTED MATERIAL FACTS

AMTRAK'S EEO POLICIES PROHIBITING DISCRIMINATION, HARASSMENT AND RETALIATION

1. Removed

2. Removed

3. As an Assistant Conductor at Amtrak, Plaintiff was responsible for taking passenger tickets, assisting passengers on and off the train, and insuring the safe movement and operation of the trains. (Pl. Depo., 41:16-21.)

4. At, or shortly following, the start of Plaintiff's employment, he received AMTRAK's policies prohibiting racial discrimination and retaliation and describing formal internal procedure for reporting EEO Complaints. (Venturelli Decl., ¶ 5, Ex. D; Pl. Depo., 85:15-22, 84:15—85:14 and Pl. Depo. Ex. 8; Venturelli Decl., ¶ 4 and Ex. C thereto.)

AMTRAK'S SAFETY AND OPERATING RULES

5. Specific to Conductors, Engineers, and other crew employees, Amtrak has adopted a series of safety and operating rules, along with materials and instructions, including: the General Code of Operating Rules; Service Standards for Train Service Employees; AMT-3, Amtrak's Air Brake and Train Handling Rules and Instructions; and, AMT- 5, Amtrak's Safety Instruction for Transportation Employees (aka "Amtrak safety and operating rules"). (Declaration of Steve Shelton ("Shelton Decl."), filed with Defendants' motions, ¶ 2, 8 and Ex. C thereto; and Venturelli Decl., ¶ 4 and Ex. C thereto.)

6. All Amtrak conductors and engineers are charged with knowing and following

1 Amtrak's safety and operating rules as a condition of employment. (Shelton Decl., ¶¶ 2, 8 and
 2 Ex. C thereto.)

3 7. Removed

4 **AMTRAK TWICE PROMOTES PLAINTIFF**

5 8. Removed

6 9. Removed

7 10. A Yard Conductor is primarily responsible for switching equipment for train make
 8 up to stage trains for departure and arrival. Adherence to safety and operation rules and policies
 9 is a critical job function given the high frequency that a Yard Conductor switches equipment.
 10 (Shelton Dec., ¶ 4.)

11 **SAFETY AND OPERATING RULES VIOLATIONS**

12 11. Amtrak employs conductors pursuant to a collective bargaining agreement with
 13 the United Transportation Union. That agreement provides that a conductor will not be
 14 disciplined without the benefit of a hearing, unless the conductor agrees to waive the charge(s)
 15 against him, and includes a right of appeal. (Shelton Dec., ¶ 3.)

16 12. After being charged with a disciplinary violation, a formal investigatory hearing is
 17 convened in which the employee, the employee's union representative, and a company
 18 representative (referred to as the Charging Officer) attend the hearing and present evidence to a
 19 Hearing Officer. The Hearing Officer is a full-time management employee. At the hearing, the
 20 employee has the ability to call any witness desired. The hearing is recorded and transcribed.
 21 The decision of the Hearing Officer may be appealed to the Labor Relations officer, and that
 22 decision may be appealed to the Public Law Board where the claim is finally decided by a panel
 23 of three: an Organization Member (union), a Carrier Member (company), and a Neutral Member
 24 (non-railroad affiliated) who is the Chairman of the Board. (Shelton Dec., ¶ 5.)

25 13. Also part of the disciplinary process is the waiver option, which is a plea bargain
 26 negotiated between the union and management, where the employee admits guilt to a rule or rules
 27 violation and waives his right to a hearing in exchange for a negotiated specified discipline.
 28 (Shelton Dec., ¶ 6.)

1 14. Removed

2 **PLAINTIFF COMMITS A SERIES OF SAFETY AND OPERATING RULES**
 3 **VIOLATIONS IN 2000 AND 2002**

4 **March 2000 Incident**

5 15. Removed

6 16. Removed

7 17. Removed

8 **January 2002 Incident**

9 18. In January 2002, Plaintiff was charged with four serious rules infractions relating
 10 to a boxcar derailment on January 10, 2002. (Declaration of Gregg Baxter ("Baxter Decl.", ¶ 2,
 11 filed with Defendants' motions; Pl. Depo., 118:22—119:1 and Pl. Depo. Exh. 27.) The charges
 12 included moving a train at an unsafe speed (Charge 1), failing to work safely and to avoid damage
 13 to equipment (Charge 2), failing to verify cars were properly secured before coupling or moving
 14 cars (Charge 3), and failing to control train movement while moving cars into a spur track
 15 (Charge 4). (Baxter Dec., ¶ 2 and Ex. A thereto; Pl. Depo., 118:19—120:3, 123:12--124:1 and Pl.
 16 Depo. Exh. 14; Shelton Dec., ¶ 11)

17 19. Removed

18 20. Removed

19 **AMTRAK TERMINATES PLAINTIFF'S EMPLOYMENT AFTER HIS THIRD**
 20 **SAFETY VIOLATION**

21 21. Removed

22 22. As a result of the incident, AMTRAK charged Plaintiff with five rules violations
 23 of the General Code of Operating Rules, Service Standards for Train Service Employees, and
 24 AMT-3, Amtrak Air Brake and Train Handling Rules and Instructions. (Shelton Dec., ¶¶ 8 and
 25 10, Ex. C; Pl. Depo., 139:19—142:11 and Pl. Depo. Exh. 19.)

26 23. Removed

27 24. Plaintiff had the ability to call witnesses and offer information on his behalf during
 28 the investigative process. (Pl. Depo., 157:23—158:3)

29 25. Removed

1 26. On September 17, 2004, hearing officer Patrick Gallagher issued a Decision which
 2 stated in pertinent part that it was “evident on the record by the testimony of the Corporation’s
 3 witnesses and your own testimony that you clearly violated the rules and instructions regarding
 4 the movement and coupling of cars and engines.” (Shelton Dec., ¶ 11, Ex. D; Pl. Depo.,
 5 154:17—155:4 and Pl. Depo. Exh. 19.)

6 27. Removed

7 28. Removed

8 29. On September 28, 2004, the union appealed Plaintiff’s termination to Amtrak’s
 9 Director of Labor Relations. On November 9, 2004, the Director denied the appeal, and noted
 10 that “Claimant’s approach to operating rule compliance is the proverbial ‘accident waiting to
 11 happen’” and continued that Amtrak “should not be required to retain Claimant until there is a
 12 serious incident where injuries, damage or delays occur because of Claimant’s misguided
 13 decision to short cut operating rules.” (Shelton Dec., ¶ 12 and Ex. E; Pl. Depo., 155:17-24 and
 14 Pl. Depo. Exh. 21.)

15 30. Removed

PLAINTIFF APPLIES REPEATEDLY FOR PROMOTION TO ENGINEER

17 31. Removed

18 32. Removed

19 33. Removed

20 34. Removed

21 35. Removed

Plaintiff’s Applications Within His First Year Of Employment

23 36. Within his first year of employment, Plaintiff submitted two applications for
 24 promotion to Engineer position. (Pl. Depo, 52:25—53:5, 187:17-21, 53:18-24, 187:17-21)

25 37. Removed

26 38. Plaintiff knew that AMTRAK had a one-year policy because Oughton informed
 27 him of it when he was hired. (Pl. Depo., 54:23—55:7; Pl. Depo, 53:22—54:8, 54:23—55:10,
 28 187:17-21.)

39. Removed

40. Plaintiff believes the application of AMTRAK's one year policy in 1998 and 1999 was discriminatory because he believes AMTRAK promoted other employees to Engineer who had worked less than a year. (Pl. Depo., 55:11-15)

41. Removed

42. Removed

43. Plaintiff did not file a lawsuit under 42 U.S.C. 1981 within four years of his unsuccessful applications in October 1998 or June 1999.

Plaintiff's Alleged 2000 Application

44. AMTRAK's records show that Plaintiff never applied for Locomotive Engineer Trainee in the year 2000: OAK0315, OC0031, and 50117308. (Venturelli Decl., ¶ 13; Pl. Depo., 298:15—299:3)

Plaintiff's 2001 Application

45. Plaintiff alleges that he applied for an Engineer position in 2001 and was not promoted, despite allegedly being more qualified than Caucasian employees who were promoted. (First Amended Complaint (“FAC”), ¶¶ 8, 9.)

46. Removed

47. Amtrak records reflect that on August 14, 2001, Plaintiff applied for an Engineer position out of Amtrak's San Jose, California facility, was interviewed on October 12, 2001, and received a 3/5 interview score. (Ho Dec., ¶¶ 8, 10, Ex. H.)

48. On January 25, 2002, Plaintiff was issued a letter advising him that he had not been selected for the position. (Ho Dec., ¶ 11 and Ex. I thereto.)

49. Five job offers were extended for Engineer Trainee positions in 2001. Three candidates received a score of 2 on the interview, with 1 being the highest possible score. Two other candidates given offers received a score of 3, the same score as Plaintiff's. No candidate with an interview score lower than Plaintiff was offered an Engineer position. (Ho Dec., ¶ 12.)

50. Removed

1 51. Removed

2 52. Removed

3 **Plaintiff Alleged Application in 2002**

4 53. Plaintiff alleges that he again applied for an Engineer position in 2002. (FAC, ¶
5 9.) Plaintiff further alleges that he received a call canceling his interview and that Amtrak failed
6 to reschedule his interview as promised. (FAC, ¶9.)

7 54. Removed

8 55. Removed

9 **Plaintiff's Application in November 2003**

10 56. Plaintiff applied for another Engineer trainee position in November 2003. (Ho
11 Dec., ¶ 5.)

12 57. As reflected on the posting, Amtrak was only considering internal applicants for
13 the position. (Ho Dec., ¶ 4; Pl. Depo., 190:5—192:2 and Pl. Depo. Exh. 23.)

14 58. Removed

15 59. Removed

16 60. Removed

17 **Plaintiff's Extensive Discipline Record Excluded Him from Promotion Consideration
in 2004**

18 61. Removed

19 62. Plaintiff applied for the Oakland positions on May 17, 2004 and was subsequently
20 interviewed by Sue Venturelli, Larry Follis, and union representative Chad Skinner. (Venturelli
21 Dec., ¶ 14; Follis Dec., ¶ 2.)

22 63. Removed

23 64. Removed

24 65. Removed

25 66. Plaintiff was notified that Amtrak had denied his 2004 application for promotion.
26 (Pl. Dep. 229:14-22.)

1 **PLAINTIFF'S RETALIATION CLAIM**

2 67. Plaintiff filed a Charge of Discrimination with the EEOC and DFEH against
3 Amtrak on February 9, 2004 alleging race discrimination for not being called to interview for the
4 Engineer position that posted in November 2003. (Pl. Dep. 65:18-66:10 and Pl. Depo. Ex. 3 and
5 4.) He later filed a Complaint of Discrimination with the DFEH on August 17, 2005 alleging
6 that his September 17, 2004 termination was a result of race discrimination and retaliation by
7 Amtrak for his previous complaint to the EEOC in February 2004. (Pl. Depo., 75:13-76:20, Pl.
8 Depo. Ex. 5 and 6.)

9 68. Removed

10 69. Removed

11 70. Removed

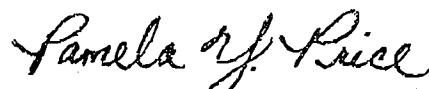
12 71. Removed

13 72. Removed

14 Respectfully submitted,

15 Dated: May 11, 2007

16 PRICE AND ASSOCIATES

17 

18 By:

19 PAMELA Y. PRICE
20 Attorneys for Plaintiff
21 JOHN EARL CAMPBELL

Respectfully submitted,

JACKSON LEWIS LLP

Dated: May 1, 2007

By:

Kathleen Maylin
Cara Ching-Senaha
Attorneys for Defendants
NATIONAL RAILROAD PASSENGER
CORPORATION dba AMTRAK and JOE
DEELY

H:\N\National Railroad Passenger Corp (40707)\Campbell (89560)\Pleadings\MSJ\JOINT separate stmt of undisputed facts - REVISED.doc